THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.7828 OF 2005

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Dated: 27-01-2006

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Between

M/s. Kalimata Ispat Industries Pvt. Ltd.,

A company incorporated under the

Indian Companies Act, 1956, with its

Registered office at 14/2, Old China

Bazar Street, 3rd Floor, Kolkata–700 001,

Rep. by its Authorized Signatory

Sri. Lalbabu Singh, s/o. Late Harinadhan

Singh.

…PETITIONER

AND

Union of India, Rep. by its Secretary,

Ministry of Railways, Railway Board,

Rail Bhavan, Raisinha Road,

New Delhi – 110 001 and others.

...RESPONDENTS

ORDER:

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Heard the learned counsel for the petitioner as well as the standing counsel for the

Railways.

Learned counsel for the petitioner submits that pursuant to the tender notification dated 23.07.2003 calling for the applications to supply 135000 Nos. of Modified Loose Jaws, the petitioner became the successful tenderer and an order was placed on 19.01.2004 for supply of modified loose jaws within 45 days, which expires on 12.03.2004.

The contract made under the said tender was governed by the Indian Railways Standard Conditions of Contract. The learned counsel further submits that the petitioner could not supply the goods within the stipulated time and therefore, by a letter dated 29.04.2004 requested the respondent for extension of delivery period by 90 days and the extension was granted.

On the other hand the learned counsel for the respondents submits that as per the request of the petitioner that he would supply the material by 10.06.2004 the extension was granted so as to enable the petitioner to supply the finished materials, but the petitioner failed to supply the same. The respondent railways requested the petitioner company vide letter dated 06.10.2004 to apply for extension of delivery period but the petitioner refused to extend the validity quoting the unprecedented rise in prices of the steel as the reason.

As the contract period was already over the impugned letter dated 20.12.2004 was issued informing the petitioner that the tender is at his risk and cost as he failed to supply the stores within the stipulated/extended delivery date as against the purchase orders dated 19.01.2004 and 06.05.2004. The petitioner was further informed that the risk purchase tender is due on 03.02.2005 and

if interested he may participate in the tender after payment of security deposit equivalent to 10% of the value of the offer.

In fact, the petitioner filed WP.No.426 of 2005 on the file of the Calcutta High Court, which was dismissed as not pressed keeping it open for the petitioner to approach the approach forum.

This Court is of the opinion that there are no admitted facts in the instant case when the time is the essence of the contract.

In fact, on a request made by the petitioner, the time and date of delivery of the materials was extended. The reciprocal obligations and duties are enumerated in detail in the Indian

Railway Standard Conditions of Contract with regard to the delivery, failure and termination, risk of loss or damage to Government or purchaser's property etc and also there is an arbitration clause to decide all the disputes or differences arising out of the conditions of the contract.

No doubt, if there are no disputed questions of fact the writ petition can be entertained. But in view of the fact that the petitioner failed to adhere to the terms and conditions of the contract, I am of the opinion that the said dispute cannot be adjudicated in a writ petition.

The writ petition is accordingly dismissed.

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V. ESWARAIAH, J

January 27, 2006

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